

National Credit Union Administration

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new activities or categories is recognized as an incidental powers activity for all federal credit unions. This part does not apply to the activities of corporate credit unions.

§ 721.2 What is an incidental powers activity?

An incidental powers activity is one that is necessary or requisite to enable you to carry on effectively the business for which you are incorporated. An activity meets the definition of an incidental power activity if the activity:

- (a) Is convenient or useful in carrying out the mission or business of credit unions consistent with the Federal Credit Union Act;
- (b) Is the functional equivalent or logical outgrowth of activities that are part of the mission or business of credit unions; and
- (c) Involves risks similar in nature to those already assumed as part of the business of credit unions.

§ 721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union's business?

The categories of activities in this section are preapproved as incidental to carrying on your business under § 721.2. The examples of incidental powers activities within each category are provided in this section as illustrations of activities permissible under the particular category, not as an exclusive or exhaustive list.

(a) *Certification services.* Certification services are services whereby you attest or authenticate a fact for your members' use. Certification services may include such services as notary services, signature guarantees, certification of electronic signatures, and share draft certifications.

(b)(1) *Charitable contributions and donations.* Charitable contributions and donations are gifts you provide to assist others through contributions of staff, equipment, money, or other resources. Examples of charitable contributions include donations to community groups, nonprofit organizations, other credit unions or credit union affiliated causes, political donations, as well as donations to create charitable foundations.

(2) *Charitable donation accounts.* A charitable donation account (CDA) is a hybrid charitable and investment vehicle, satisfying the conditions in paragraphs (b)(2)(i) through (vii) of this section, that you may fund as a means to provide charitable contributions and donations to qualified charities. If you fund a CDA that satisfies all of the conditions in paragraphs (b)(2)(i) through (vii) of this section, then you may do so free from the investment limitations of the Federal Credit Union Act and part 703 of this chapter.

(i) *Maximum aggregate funding.* The book value of your investments in all CDAs, in the aggregate, as carried on your statement of financial condition prepared in accordance with generally accepted accounting principles, must be limited to 5 percent of your net worth at all times for the duration of the accounts, as measured every quarterly Call Report cycle. This means that regardless of how many CDAs you invest in, the combined book value of all such investments must not exceed 5 percent of your net worth. You must bring your aggregate accounts into compliance with the maximum aggregate funding limit within 30 days of any breach of this limit.

(ii) *Segregated account.* The assets of a CDA must be held in a segregated custodial account or special purpose entity and must be specifically identified as a CDA.

(iii) *Regulatory oversight.* If you choose to establish a CDA using a trust vehicle, the trustee must be regulated by the Office of the Comptroller of the Currency (OCC), the U.S. Securities and Exchange Commission (SEC), another federal regulatory agency, or a state financial regulatory agency. A regulated trustee or other person or entity that is authorized to make investment decisions for a CDA (manager), other than the credit union itself, must be either a Registered Investment Adviser or regulated by the OCC.

(iv) *Account documentation and other written requirements.* The parties to the CDA, typically the funding credit union and trustee or other manager of the account, must document the terms and conditions controlling the account in a written agreement. The terms of the agreement must be consistent with

this section. Your board of directors must adopt written policies governing the creation, funding, and management of a CDA that are consistent with this section, must review the policies annually, and may amend them from time to time. Your CDA agreement and policies must at a minimum:

(A) Provide that the CDA will make charitable contributions and donations only to charities you name therein that are exempt from taxation under section 501(c)(3) of the Internal Revenue Code;

(B) Document the investment strategies and risk tolerances the CDA trustee or other manager must follow in administering the account;

(C) Provide that you will account for all aspects of the CDA, including distributions to charities and liquidation of the account, in accordance with generally accepted accounting principles; and

(D) Indicate the frequency with which the trustee or manager of the CDA will make distributions to qualified charities as provided in paragraph (b)(2)(v) of this section;

(v) *Minimum distribution to charities.* You are required to distribute to one or more qualified charities, no less frequently than every 5 years, and upon termination of a CDA regardless of the length of its term, a minimum of 51 percent of the account's total return on assets over the period of up to 5 years. Other than upon termination, you may choose how frequently CDA distributions to charity will be made during each period of up to 5 years. For example, you may choose to make periodic distributions over a period of up to 5 years, or only a single distribution as required at the end of that period. You may choose to donate in excess of the minimum distribution frequency and amount;

(vi) *Liquidation of assets upon CDA termination.* Upon termination of the CDA, you may receive a distribution of the remaining account assets in cash or you may receive a distribution in kind of the remaining account assets but only if those assets are permissible investments for federal credit unions under the Federal Credit Union Act and part 703 of this chapter; and

(vii) *Definitions.* For purposes of this section, the following definitions apply:

(A) *Distribution in kind* is your acceptance of remaining CDA assets, upon termination of the account, in their original form instead of in cash resulting from the liquidation of the assets.

(B) *Qualified charity* is a charitable organization or other non-profit entity recognized as exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

(C) *Registered Investment Adviser* is an investment adviser registered with the SEC pursuant to the Investment Advisers Act of 1940.

(D) *Total return* is the actual rate of return on all investments in a CDA over a given period of up to 5 years, including realized interest, capital gains, dividends, and distributions, but exclusive of account fees and expenses provided they were not paid to the credit union that established the CDA or to any of its affiliates.

(E) *Affiliate* is an entity in which the credit union has any ownership interest directly or indirectly. This would not apply to ownership due to the funding of employee benefits.

(c) *Correspondent services.* Correspondent services are services you provide to other credit unions including foreign credit unions that you are authorized to perform for your members or as part of your operation. These services may include loan processing, loan servicing, member check cashing services, disbursing share withdrawals and loan proceeds, cashing and selling money orders, performing internal audits, and automated teller machine deposit services.

(d) *Electronic financial services.* Electronic financial services are any services, products, functions, or activities that you are otherwise authorized to perform, provide, or deliver to your members but performed through electronic means. Electronic services may include automated teller machines, electronic fund transfers, online transaction processing through a web site, web site hosting services, account aggregation services, and Internet access services to perform or deliver products or services to members.

(e) *Excess capacity.* Excess capacity is the excess use or capacity remaining in facilities, equipment, or services that: You properly invested in or established, in good faith, with the intent of serving your members; and you reasonably anticipate will be taken up by the future expansion of services to your members. You may sell or lease the excess capacity in facilities, equipment or services such as office space, employees and data processing.

(f) *Financial counseling services.* Financial counseling services means advice, guidance or services that you offer to your members to promote thrift or to otherwise assist members on financial matters. Financial counseling services may include income tax preparation service, electronic tax filing for your members, counseling regarding estate and retirement planning, investment counseling, and debt and budget counseling.

(g) *Finder activities.* Finder activities are activities in which you introduce or otherwise bring together outside vendors with your members so that the two parties may negotiate and consummate transactions and include vendors of non-financial products, vendors that are other financial institutions, and vendors of financial products such as insurance and securities. Finder activities may include endorsing a product or service, negotiating group discounts on behalf of your members, offering third party products and services to members through the sale of advertising space on your website, account statements and receipts, and selling statistical or consumer financial information to outside vendors to facilitate the sale of their products to your members. You may perform administrative functions on behalf of vendors to facilitate transactions between your members and another institution.

(h) *Loan-related products.* Loan-related products are the products, activities or services you provide to your members in a lending transaction that protect you against credit-related risks or are otherwise incidental to your lending authority. These products or activities may include debt cancellation agreements, debt suspension agreements, letters of credit and leases.

(i) *Marketing activities.* Marketing activities are the activities or means you use to promote membership in your credit union and the products and services you offer to your members. Marketing activities may include advertising and other promotional activities such as raffles, membership referral drives, and the purchase or use of advertising.

(j) *Monetary instrument services.* Monetary instrument services are services that enable your members to purchase, sell, or exchange various currencies. These services may include the sale and exchange of foreign currency and U.S. commemorative coins. You may also use accounts you have in foreign financial institutions to facilitate your members' transfer and negotiation of checks denominated in foreign currency or engage in monetary transfer services for your members.

(k) *Operational programs.* Operational programs are programs that you establish within your business to establish or deliver products and services that enhance member service and promote safe and sound operation. Operational programs may include electronic funds transfers, remote tellers, point of purchase terminals, debit cards, payroll deduction, payroll services, pre-authorized member transactions, direct deposit, check clearing services, savings bond purchases and redemptions, tax payment services, wire transfers, safe deposit boxes, loan collection services, and service fees.

(l) *Stored value products.* Stored value products are alternate media to currency in which you transfer monetary value to the product and create a medium of exchange for your members' use. Examples of stored value products include stored value cards, public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, postage stamps, electronic benefits transfer script, and similar media.

(m) *Trustee or custodial services.* Trustee or custodial services are services in which you are authorized to act under any written trust instrument or custodial agreement created or organized in the United States and forming part of a tax-advantaged savings plan,

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as authorized under the Internal Revenue Code. These services may include acting as a trustee or custodian for member retirement, education and health savings accounts.

[66 FR 40857, Aug. 6, 2001, as amended at 69 FR 45238, July 29, 2004; 73 FR 62856, Oct. 22, 2008; 75 FR 34621, June 18, 2010; 77 FR 31992, May 31, 2012; 78 FR 76731, Dec. 19, 2013]

§ 721.4 How may a credit union apply to engage in an activity that is not preapproved as within a credit union's incidental powers?

(a) *Application contents.* To engage in an activity that may be within an FCU's incidental powers but that does not fall within a preapproved category listed in § 721.3, you may submit an application by certified mail, return receipt requested, to the NCUA Board. Your application must describe the activity, your explanation, consistent with the test provided in paragraph (c) of this section, of why this activity is within your incidental powers, your plan for implementing the proposed activity, any state licenses you must obtain to conduct the activity, and any other information necessary to describe the proposed activity adequately. Before you engage in the petition process you should seek an advisory opinion from NCUA's Office of General Counsel, as to whether a proposed activity fits into one of the authorized categories or is otherwise within your incidental powers without filing a petition to amend the regulation.

(b) *Processing of application.* Your application must be filed with the Secretary of the NCUA Board. NCUA will review your application for completeness and will notify you whether additional information is required or whether the activity requested is permissible under one of the categories listed in § 721.3. If the activity falls within a category provided in § 721.3, NCUA will notify you that the activity is permissible and treat the application as withdrawn. If the activity does not fall within a category provided in § 721.3, NCUA staff will consider whether the proposed activity is legally permissible. Upon a recommendation by NCUA staff that the activity is within a credit union's incidental powers, the

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NCUA Board may amend § 721.3 and will request public comment on the establishment of a new category of activities within § 721.3. If the activity proposed in your application fails to meet the criteria established in paragraph (c) of this section, NCUA will notify you within a reasonable period of time.

(c) *Decision on application.* In determining whether an activity is authorized as an appropriate exercise of a federal credit union's incidental powers, the Board will consider:

(1) Whether the activity is convenient or useful in carrying out the mission or business of credit unions consistent with the Act;

(2) Whether the activity is the functional equivalent or logical outgrowth of activities that are part of the mission or business of credit unions; and

(3) Whether the activity involves risks similar in nature to those already assumed as part of the business of credit unions.

§ 721.5 What limitations apply to a credit union engaging in activities approved under this part?

You must comply with any applicable NCUA regulations, policies, and legal opinions, as well as applicable state and federal law, if an activity authorized under this part is otherwise regulated or conditioned.

§ 721.6 May a credit union derive income from activities approved under this part?

You may earn income for those activities determined to be incidental to your business.

§ 721.7 What are the potential conflicts of interest for officials and employees when credit unions engage in activities approved under this part?

(a) *Conflicts.* No official, employee, or their immediate family member may receive any compensation or benefit, directly or indirectly, in connection with your engagement in an activity authorized under this part, except as otherwise provided in paragraph (b) of this section. This section does not apply if a conflicts of interest provision within another section of this chapter applies to a particular activity; in such case, the more specific conflicts of interest provision controls.